



**Informing Progress** - Shaping the Future

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## **Bullying and Harassment at work: the new framework**

Historically in England and Wales there is no freestanding legal claim for bullying that employees can bring to the Employment Tribunal.

However, harassment is unlawful under the Equality Act 2010, which defines harassment as

**“unwanted conduct related to a protected characteristic that has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for that person.”**

The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. Bullying and harassment unfortunately remain significant workplace issues despite increasing awareness of the problem.

Typical harassment and bullying behaviours range from unwelcome remarks and persistent criticism to unwanted physical contact and shouting. Recipients of these inappropriate behaviours are more likely to experience anxiety, stress, and a loss of confidence.

The Employment Rights Act 1996 is the most common legal basis for bringing a bullying claim, which it defines in terms of a "breach of the duty of care" by an employer.

Concern over bullying in the workplace and its relationship to work-related stress has been on the increase over recent years. Bullying can include physical acts, management style, and allocation of work. A successful claim in this context would need to show a breach of the employment contract.

There are several recent cases that illustrate the legislation surrounding bullying and harassment in the workplace in the UK.

In March 2023, Clyde & Co successfully defended a stress at work/bullying/harassment claim. The claimant alleged he was bullied between 2016 and 2017 and pursued a claim for stress at work along with a claim under the Protection from Harassment Act 1997. The trial judge commented that claims under the 1997 Act are notoriously difficult to prove, and it would be extremely hard to establish breach of duty.

In another case, the High Court upheld two personal injury claims for work-related stress and bullying. In both cases, the court followed the principles set out in the case of **Hatton v Sutherland**, which established that an employer is not liable for psychiatric injury caused by stress at work unless it has breached its duty of care.

To date The Employment Rights Act 1996 is the most common legal basis for bringing a bullying claim, which it understands in terms of a "breach of the duty of care" by an employer. A successful claim in this context would need to show a breach of the employment contract.

Similarly, The UK's Equality Act 2010 defines harassment as "unwanted conduct related to a relevant protected characteristic.."

More serious instances of bullying can give rise to discrimination claims, such as harassment.

Here are summaries of three current employment law statutes in the UK dealing with the issue of stress, bullying, and harassment:

1. Employment Rights Act 1996: This is the most common legal basis for bringing a bullying claim, which it understands in terms of a 'breach of the duty of care' by an employer. A successful claim in this context would need to show a breach of the employment contract.
2. Protection from Harassment Act 1997: This act allows employees to win damages under certain circumstances if they are harassed by fellow employees. This can include bullying and sex harassment claims.
3. Equality Act 2010: This act defines harassment as "unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual".

These laws provide legal protection for employees who may be suffering from bullying, harassment, or stress at work. They allow employees to bring claims for damages or constructive dismissal if they can show that their employer has breached their duty of care or violated their dignity.

Nevertheless, the most significant recent legal development in England and Wales is the proposed Bullying and Respect at Work Bill. This bill aims to offer a new legal definition of bullying at work and make it mandatory for businesses to set up formal mechanisms for reporting and investigating bullying. If passed, the bill will allow employment tribunals to hear workplace bullying claims and introduce a new respect at work code that establishes minimum standards for positive and respectful work environments.

Additionally, it will give powers to the Equalities and Human Rights Commission (EHRC) to investigate workplaces and take enforcement action where there is evidence of a culture of bullying. This proposed legislation reflects the growing recognition of workplace bullying as a significant issue that causes irreparable harm to employees and costs employers billions of pounds through lost working days and sickness.

The bill aims to address the subjective and difficult-to-verify nature of workplace bullying by providing a statutory definition and formal reporting mechanisms, signalling a potential shift in legal approaches to addressing stress and bullying at work in England and Wales.

The proposed Bullying and Respect at Work Bill, presented by Labour MP Rachel Maskell, aims to provide greater protection for employees and workers from workplace bullying and promote positive and supportive workplace cultures in UK businesses.

The key provisions of the bill include:

1. **New Definition of Bullying:** The bill seeks to create a statutory definition of bullying at work, addressing the absence of a specific statutory definition currently. This definition aims to clarify what constitutes bullying, providing a clear framework for identifying and addressing such behaviour.
2. **Respect at Work Code:** The bill includes the introduction of a Respect at Work Code, outlining minimum standards of acceptable behaviour at work and how employers should manage bullying in the workplace. This code aims to establish a framework for fostering positive and respectful work environments.
3. **Tribunal Claims:** If the bill becomes law, it would enable workers to bring a claim related to bullying in the Employment Tribunal. Workers would be able to claim compensation if their employer has failed to protect them from bullying or has dismissed them for reasons related to bullying.
4. **Enforcement Measures:** The bill seeks to give powers to the Equalities and Human Rights Commission (EHRC) to investigate workplaces and take enforcement action where there is evidence of a culture of bullying.

The proposed bill represents a significant step in addressing workplace bullying by providing a legal framework for reporting, investigating, and enforcing workplace bullying, as well as establishing minimum standards for positive and respectful work environments.

If passed, the bill would offer employees greater protection from bullying and harassment at work and provide a clearer path for addressing such issues through legal channels.

The Bullying and Respect at Work Bill is currently in the early stages and may undergo amendments before becoming law. However, the proposed bill, presented by Labour MP Rachel Maskell in July 2023, aims to provide greater protection for employees and workers from workplace bullying and promote positive and supportive workplace cultures in UK businesses.

The bill seeks to introduce a statutory definition of bullying at work, establish a Respect at Work Code outlining minimum standards for positive and respectful work environments, and enable workers to bring a claim related to bullying in the Employment Tribunal. Additionally, the bill aims to give powers to the Equalities and Human Rights Commission (EHRC) to investigate and issue enforcement notices against businesses where bullying is found to be present.

In conclusion, although the bill is still in the proposal stage and has not yet become law. Nevertheless, once it comes into force will signify a new and different approach to this increasingly concerning aspect of modern working life.

It is believed that this development will offer workers greater rights and protection against bullying providing a long awaited statutory definition as well as formal reporting mechanisms.

The proposed new law aims to address the issue of workplace bullying and advance positive behaviours within work environments, with the goal of reducing harm caused to thousands of employees and the resulting billions of pounds lost by employers due to non-productivity and sickness.

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